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EWB
Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Laboratoire Rene Guinot

Serial No. 75/681,947

Jay H. Geller for Laboratoire Rene Guinot.

Priscilla Miton, Trademark Examining Attorney, Law Office
110 (Chris A. F. Pedersen, Managing Attorney).

Before Simms, Hanak and Quinn, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

Laboratoire Rene Guinot (applicant) seeks to
register in typed drawing form SKIN PEACE for "a full
line of skin care, body care, hair care, nail care, color
cosmetics and shaving care preparations." The intent-to-
use application was filed on April 15, 1999.

The Examining Attorney has refused registration
pursuant to Section 2(d) of the Trademark Act on the
basis that applicant's mark, as applied to applicant's
goods, is likely to cause confusion with the mark PEACE,
previously registered in typed drawing form for

"potpourri, perfume bath oil, body oil, non-medicated
bath salts, sachets,
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scented skin soaps, [and] scented toilet soaps."
(Registration No. 1,782,341).

When the refusal to register was made final,
applicant appealed to this Board. Applicant and the
Examining Attorney filed briefs. On June 28, 2000
applicant's attorney requested an oral hearing. However,
in a telephone conversation with Administrative Trademark
Judge Hanak on November 21, 2001 applicant's attorney
stated that applicant no longer wished to have an oral
hearing.

In any likelihood of confusion analysis, two key,
although not exclusive, considerations are the
similarities of the marks and the similarities of the
goods. Federated Foods, Inc. v. Fort Howard Paper Co.,
544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The
fundamental inquiry mandated by Section 2(d) goes to the
cumulative affect of differences in the essential
characteristics of the goods and differences in the
marks.").

Considering first the goods, they are, in part,

legally identical. To elaborate, applicant seeks to register SKIN PEACE for, among other goods, a full line of skin care and body care products. The cited mark PEACE is registered for, among other goods, body oil and skin soaps. A full line of

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skin and body care products (certain of applicant's goods) would clearly encompass body oil and skin soaps (certain of registrant's goods).

Considering next the marks, we note at the outset that when the goods are at least in part legally identical as is the case here, "the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines." Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). Applicant has adopted registrant's PEACE mark in its entirety, and merely added to it the descriptive word SKIN. As applied to skin care products (certain of applicant's goods), the word "skin" is clearly descriptive. Moreover, we note that with its initial application, applicant disclaimed the exclusive right to use the word "skin" apart from the mark in its

entirety.

In comparing marks, we are obligated to compare the marks in their entireties, including any matter which is descriptive. American Home Products v. B.F. Ascher, 473 F.2d 903, 176 USPQ 532, 533 (CCPA 1973). However, there is nothing improper in comparing marks to give more weight to the dominant element of a mark consisting of two or more

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words. In the case of applicant's mark SKIN PEACE, the arbitrary word PEACE clearly dominates over the disclaimed, descriptive word SKIN. 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 23:45 at page 23-99 (4th ed. 2001). A consumer familiar with registrant's PEACE body oil and skin soaps, upon seeing applicant's mark SKIN PEACE on a complete line of skin and body care products, could well assume that both registrant's products and applicant's products emanate from a common source. Said consumer would believe that the maker of PEACE body oils and skin soaps, upon expanding its offerings to include a full line of skin and body care products, elected to "expand" its PEACE

mark by adding the descriptive word SKIN to form the mark SKIN PEACE.

In short, because applicant's goods and registrant's goods are, at least in part, legally identical, and because applicant has adopted registrant's mark in its entirety and merely added a descriptive word to it, we find that there exists a likelihood of confusion resulting from the contemporaneous use of SKIN PEACE for, at a minimum, a full line of skin care and body care products, and PEACE for, at a minimum, body oils and skin soaps. Our finding that there

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exists a likelihood of confusion is only bolstered by applicant's admission at page 6 of its brief that "both the applicant's and registrant's goods are what would be considered 'impulse' goods," and that "none of these types of goods is necessarily costly." In short, applicant has conceded that in selecting its goods and registrant's goods, consumers act on impulse and exercise only a limited degree of care.

One final comment is in order. As explained in orders of this Board dated July 10, 2001 and August 20,

2001, applicant has at various times throughout this proceeding improperly tried to introduce into evidence third-party registrations containing the words PEACE, as well as what purport to be third-party advertisements on the Internet for skin care products whose brand names contain the word PEACE. For the reasons outlined in these two Board orders, we have accorded this "evidence" no weight.

However, even if we had considered this "evidence" which was improperly introduced, said "evidence" would not change our opinion that there exists a likelihood of confusion. The third-party registrations and the handful of Internet advertisements do not show the extent of use of the

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word PEACE in connection with skin and body care products. Because applicant has provided absolutely no evidence showing the extent to which consumers have been exposed to skin and body care products whose brand names contain the word PEACE, we are not in a position to say that consumers have become so accustomed to seeing the word PEACE used in connection with these products such

that they look to other parts of trademarks to distinguish among said products. See Smith Brothers v. Stone Manufacturing, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973) ("But in the absence of any evidence showing the extent of use of any of such marks or whether any of them are now in use, they [the third-party registrations] provide no basis for saying that the marks so registered have had, or may have, any effect at all on the public mind so as to have a bearing on likelihood of confusion.").

Decision: The refusal to register is affirmed.